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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/500,096

01/11/2005

Martin Hendrix

Le A 35 821

7642

35969

7590

04/04/2008

Bayer Health Care LLC  
400 Morgan Lane  
West Haven, CT 06516

EXAMINER

SAEED, KAMAL A

ART UNIT

PAPER NUMBER

1626

MAIL DATE

DELIVERY MODE

04/04/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/500,096	<b>Applicant(s)</b> HENDRIX ET AL.	
	<b>Examiner</b> Kamal A. Saeed	<b>Art Unit</b> 1626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11, 12 and 15 is/are pending in the application.
- 4a) Of the above claim(s) 9 and 12-15 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-8 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/24/04</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### ***DETAILED ACTION***

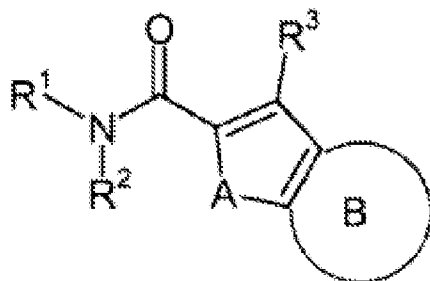
Claims 10, 13 and 14 have been canceled. Therefore, claims 1-9, 11, 12 and 15 are currently pending in this application. Claims 9 and 12-15 are withdrawn from further consideration by the Examiner, 37 C.F.R. § 1.142(b), as being drawn to a non-elected invention. The withdrawn subject matter is patentably distinct from the elected subject matter as it differs in structure and element and would require separate search considerations. In addition, a reference, which anticipates one group, would not render obvious the other.

### **Information Disclosure Statement**

Applicant's Information Disclosure Statements, filed on June 24, 2004 has been considered. Please refer to Applicant's copy of the 1449 submitted herewith.

### **Response to Restriction**

1. Applicants' election, the Invention of Group I, claims 1-8 and 11, drawn to products of



Formula I, as defined in claim 1, in response filed January 14, 2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Art Unit: 1626

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

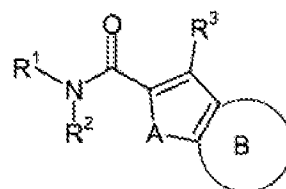
### **Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1 -5 and 11 are rejected under 35 U.S.C. 102 (a) as being anticipated by WO 02/100857 A1.



The present invention recites compounds of Formula, , wherein

- R<sup>1</sup> represents 1-azabicyclo[2.2.2]oct-3-yl,
- R<sup>2</sup> represents hydrogen or C<sub>1</sub>-C<sub>6</sub>-alkyl,
- R<sup>3</sup> represents hydrogen, halogen or C<sub>1</sub>-C<sub>6</sub>-alkyl,
- A represents oxygen or sulfur,

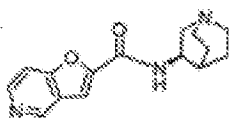
the ring B represents benzo, pyrrolo, pyrimido, pyridazo or pyridazino. In the instance where B is pyridyl group;

R<sup>3</sup> is H; A is S or O; the compound is anticipated by the disclosure of WO 02/10857 A1..

Art Unit: 1626

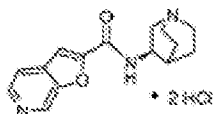
Specifically, WO 02/10857 A1 disclose compounds

**Example 2:** N-[(3R)-1-azabicyclo[2.2.2]oct-3-yl]furo[3,2-c]pyridine-2-carboxamide:



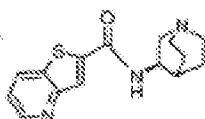
(see page 68)

**Example 7:** N-[(3R)-1-azabicyclo[2.2.2]oct-3-yl]furo[2,3-c]pyridine-2-carboxamide  
dihydrochloride:



(see page 75)

**Example 18:** N-[(3R)-1-azabicyclo[2.2.2]oct-3-yl]thieno[3,2-b]pyridine-2-carboxamide:



(see page 88).

WO 02/10857 A1 also teach pharmaceutical use of the compounds in the treatment of CNS disorders ( see page 6).

For these reasons, **Claims 1 -5** and 11 of the present application are rejected under 35 U.S.C. 102 (a) as being anticipated by WO 02/10857.

**Allowable Subject Matter**

Claims 6-8 are allowable over the prior art.

**Telephone Inquiry**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamal A Saeed whose telephone number is (571) 272-0705. The examiner can normally be reached on M-T 7:30 AM- 5:00 PM.

Communication via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by applicant and should be addressed to [joseph.mckane@uspto.gov]. All Internet e-mail communications will be made of record in the application file. PTO employees will not communicate with applicant via Internet e-mail where sensitive data will be exchanged or where there exists a possibility that sensitive data could be identified unless there is of record an express waiver of the confidentiality requirements under 35 U.S.C. 122 by the applicant. See the Interim Internet Usage Policy published by the Patent and Trademark Office Official Gazette on February 25, 1997 at 1195 OG 89.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or public PAIR only. For more information about the pair system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.

/Kamal A Saeed, Ph.D./

Primary Examiner, Art Unit 1626

Application/Control Number: 10/500,096  
Art Unit: 1626

Page 6